IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No 6679 of 2000

with

CRIMINAL MISC. APPLICATION No 6680 of 2000

with

CRIMINAL MISC. APPLICATION No 6682 of 2000

For Approval and Signature: Sd/-

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

UN PAI, A MAJUMDAR & ML VARUDKAR

Versus

STATE OF GUJARAT

Appearance:

MR KS NANAVATI for Petitioner
MR KC SHAH APP for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 13/12/2000

C.A.V. JUDGEMENT

1. RULE. Service of Rule is waived by the learned counsel appearing for the respondents.

2. These three applications for bail under Section 439 of the Code of Criminal Procedure are filed by three officers of the Indian Oil Corporation (I.O.C.) upon being arrested pursuant to a First Information Report (F.I.R.) registered with the Central Bureau of Investigation (C.B.I.), Gandhinagar and upon rejection of their similar appications by a reasoned order of the learned Special Judge. The offences alleged in the F.I.R. are punishable under Sections 120-B and 420 of the Indian Penal Code (I.P.C.) and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. Subsequently, the offences under Sections 467 and 471 of the I.P.C. are added in the case by application dated 24.11.2000 filed by the C.B.I. in the Court of learned Special Judge, Ahmedabad. About five months after the F.I.R., the applicants were arrested on 10.10.2000 and remanded to police custody. After interrogation during the remand period, the applicants were taken into judicial custody on a specific averment that interrogation of the applicants in police custody was no longer required.

3. The contours of the allegations in the F.I.R. are such that special Sales Tax concessions are allowed to certain categories of customers to whom high speed diesel (HSD) is sold by the major oil companies operating in the area. The concession in payment of sales tax could be availed by the eligible private industries which use HSD as raw material upon fulfilling the prescribed formalities. The eligible private industries using such HSD as raw material, as distinguished from the petrol pumps to whom such concessions are not granted, have to justify their requirement of HSD to the oil companies as well as to the Sales Tax Department to avail of the concessional rate of sales tax. The functioning of such private industries is inspected by the field officers of the oil companies and the sales tax department who give eligibility certificate before these industries can lift HSD from the oil companies. It was learnt that several private firms, in collusion with the oil companies and

officials of the sales tax department, circumvented the mandatory legal provisions and lifted HSD even as many of such firms were, in fact, defunct. The officers of the oil companies are alleged to have wrongly certified the requirement of HSD of such firms and the officers of the sales tax department are alleged to have wrongly issued eligibility certificates to such firms enabling them to lift HSD from the oil companies and afterwards divert the same to petrol pumps. It is also alleged that such firms gave false or forged declarations in the prescribed forms. The conditions imposed for the allotment of HSD were not complied and, by diverting the HSD to open market, wrongful gains are alleged to have been made. Thus, huge revenue loss is alleged to have been caused by the acts and omissions of the officials of the oil companies, sales tax department and the private firms, and the acts of criminal conspiracy and abuse of official position punishable under Sections 120-B and 420 as also Sections 467 and 471 of the I.P.C. and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act are alleged.

4. It is contended by the applicants in the applications that they were Managers (Sales) for a particular period and several delivery orders for release of HSD to private firms were issued under their signatures as a part of their duty; that the allegations against the applicants are vague and there were no control orders in respect of HSD under the Essential Commodities Act; that oil companies were bound to release HSD to the private firms who were issued eligibility certificates by the Commissioner of Sales Tax and charge only 5% sales tax and surcharge and there was no statutory obligation for the oil companies or its officials to evaluate the requirements of the customers. It is also contended that the guidelines issued by the Oil Coordinating Committee (OCC) for release of petroleum products to the consumers, which required assessment and evaluation by a Technical Evaluation Committee (TEC), were not in the form of any statutory rules and regulations and they also did not apply to the supply of normal HSD. Thus, in short, no prima facie case of any offence having been committed by the applicants was made out. It is further contended that the applicants are taken into custody since 10.10.2000. Their custodial interrogation is over. They have fully cooperated with the investigation and they being respectable citizens having their families and there being no likelyhood of their jumping the bail or tampering with any evidence, they are required to be enlarged on bail during the pendency of investigation and trial.

4.1 By filing detailed affidavits of the investigating officer of C.B.I., it is stated and submitted that there is sufficient prima facie evidence against the applicants involving them in the offences punishable under Sections 120-B, 420, 467 and 471 of the I.P.C. read with Sections 13 (2) and 13 (1) (b) of the Prevention of Corruption Act. That the investigation is going on and it is at a crucial stage and the accused have caused huge revenue loss in the form of evasion of sales tax, which approximately runs into 400 to 500 crores of rupees. During the course of investigation, statements of officers of the oil companies and sales tax department are recorded and a huge quantity of documents and files collected during the searches are being scrutinized. It is revealed that the procedure for supply of HSD is prescribed by the Ministry of Petroleum and Natural Gas wherein the recommendation and certification by the TEC is provided for. It is further submitted that the applicants as well as other officers of the I.O.C. have not been cooperating during the investigation and though the complaint was filed in the month of May 2000, there could not be any progress till September 2000 in the matter of investigation because of total non-cooperation by the applicants and other officers. It is stated that it was only after the Division Bench of this Court issued directions in a public interest litigation that the investigation in this case could proceed further. After the arrest of the applicants, the investigating agency could collect many evidences connecting the applicants with the crime. Specific averments as regards the delivery orders for thousands of kilolitres of HSD, as were issued by the applicants, are made. It is submitted that investigation with regard to the role of the applicants and into the allegations of receipt of illegal gratification by the applicants are going on and, if the applicants are released on bail, they are likely to come in the way of investigation. It is further submitted that in view of the status and position held by the applicants in the I.O.C. and the fact that they are still on duty and the I.O.C. and its officers have taken a protective stand and a totally non-cooperative attitude, there are strong possibilities of the evidence being tampered. Thus, the applications are vehemently objected on behalf of the C.B.I.

5. It is pertinent to note that in a public interest litigation, being Special Criminal Application No.792 of 2000, a Division Bench of this Court has taken cognizance of the large-scale scam in which public exchequer has

suffered a lot. It is alleged by the petitioner in that petition that in spite of large-scale corruption involved, there was no proper investigation in the scam and, as recorded in the order dated 13.9.2000 of the Court, it appeared that the investigating officers of the C.B.I. were not given a free hand in the investigation. A grievance was made by the petitioner in that case that the investigating officer had become quiet after some stage and the investigation was not proceeding in the way it ought to have proceeded. It was also noticed that out of 105 persons called by the investigating officer, only 43 persons had attended and the remaining persons and offices of certain government companies were not appearing before the investigating officer. A direction was, therefore, issued to the effect that the investigating officer shall not be restrained by any agency while he was investigating a cognizable offence involving huge amount. By virtue of the aforesaid order and subsequent orders of this Court, which were placed for the perusal of this Court, it is seen that huge amounts were recovered from some officers of the I.O.C. during the course of investigation while some of the accused were absconding. In the order dated 12.10.2000, an apprehension was expressed that if intentional delay is caused in the investigation, it might result in destroying documentary evidence and then the C.B.I. may not be in a position to have the connecting links with regard to certain transactions. The grievance of the learned counsel for the C.B.I. to the effect that complete and full information were not being provided by the I.O.C. is also taken note of in the said order. In fact, the State of Gujarat and the Director General of Police as also the Chief Vigilance Officers of 23 banks were issued directions by this Court for providing necessary assistance so as to facilitate investigation by the order dated 12.10.2000. In the latest order dated 29.11.2000, the Division Bench has observed as under:

"Suffice it to say that in view of the record which is placed before us, that is to say, the file containing policy and correspondence and the status report, we are of the view that the investigating officer should proceed with the investigation as speedily as possible and if any officer is not appearing before him, he should immediately report to the Court. We are assured that the officers who are required by the investigating officer shall remain present before him. It appears that the investigation has reached such a stage that if the investigating officer slows down the investigation, there may

be adverse impact on the matter. Therefore, we direct the investigating officer to speed up the investigation by taking up all necessary care which is required to be taken".

6. Against this backdrop of facts, it is the case of the prosecution, as far as the present applicants are concerned, that the private firms which procured HSD from the I.O.C. at a concessional rate of sales tax had done so in collusion with the officers and thereafter HSD lifted in this manner was actually diverted to petrol pumps causing a huge revenue loss to the government and wrongful gain to the private firms as well as the applicants. It is the case of the prosecution that the erstwhile Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum) has by its specific letter dated 2.1.1981 addressed to the I.O.C. conveyed the decision that certain information were required to be obtained from the processors before releasing HSD to them and, since then, the evaluation and reporting of the TEC is a condition for supply of HSD to the processors. The role and function of the TEC is clarified and emphasized by specific letters of the Ministry of Petroleum and Natural Gas as evidenced in the documents produced with the applications and other correspondence. A case is sought to be built on behalf of the applicants that the requirement of evaluation by the TEC was restricted to the supply of different specific petroleum products and HSD was not one of them. On the basis of a letter dated 2.12.2000 of a Director to the Government of India (Ministry of Petroleum & Natural Gas), it is pointed out that reading of the four circulars mentioned in the letter indicated applicability of TEC requirement to other products. As against that, the learned counsel for the C.B.I. has produced material and documents in the form of letters and circulars as also the correspondence indicating the requirements of certification and recommendation of the TEC. In fact, for the purpose of regulating supply of petroleum products, a high-level Oil Coordinating Committee (OCC) was constituted under the Ministry of Petroleum and Natural Gas of which the State level Coordinator was the Deputy General Manager of the I.O.C., and this OCC had clarified and confirmed the requirement of certification and recommendation by TEC for the supply of HSD to the processors.

7. After careful consideration of the rival contentions in light of the material and documents collected during the investigation and placed for perusal of this Court, it is found that there are sufficient grounds to reach a prima facie conclusion that offences

punishable under the aforesaid sections are committed and that the applicants are involved in the same. There is no dispute about the fact that the delivery orders for thousands of kilolitres of HSD were signed and issued by the applicants without the approval of the Ministry of Petroleum & Natural Gas and without the recommendations of the TEC in respect of particular firms. It is seen that, prima facie, such recommendations were necessary and, in fact, understood to be necessary by the officers of the I.O.C. There is also material indicating the use of forged documents and delivery of HSD in the name of defunct private firms with the involvement of touts, mediators and certain transport operators. Such systematic activity has been continued over a long period of time causing huge loss of revenue to the public exchequer and corresponding benefit to the accused. It is also evident that the investigation has been halted and hampered; and even after the orders of this Court in the P.I.L., the C.B.I. is required to collect, analyse and scrutinize a large number of documents and interrogate many officers and individuals. There is, therefore, substance in the submissions of the C.B.I. that investigation is at a crucial stage and there are strong possibilities of the evidence being tampered even before it is identified, collected and collated.

8. On the legal aspect of the matter, the learned senior counsel for the petitioners, Mr. K.S.Nanavati relied upon a number of judgments. D.R.GURU v. EMPEROR [AIR 1930 Bombay 484] is relied upon to submit that vague allegations against the prisoner are not enough to refuse bail. In the facts of that case, the applicant was re-committed to custody on the application of the prosecution and it was not clear how the investigation would have been hindered. SANT RAM v. STATE [AIR 1952 J & K 28] was relied upon to submit that the fact of intimidation of the witnesses by the accused ought to be proved for cancelling the bail. It is also held in the same judgment that coming into contact of the prosecution witnesses and exerting undue influence over them would certainly be sufficient for not granting them bail or for cancelling bail. STATE v. MOHAMED HUSSAIN KAKRODDIN MANIYAR [AIR 1968 Bombay 344) is relied upon to submit that in considering the danger of witnesses being tampered or of evidence being suborned, the character, means and standing of the accused have to be taken into consideration and that the Court has to see that there was no punitive detention. In the facts of that case, the investigation was practically over and report was submitted for necessary sanction to the Central Government. Relying upon STATE OF KERALA v. M.K.PYLOTH

[1973 Cri.L.J. 869], it was submitted that the Court had both right and duty to satisfy itself whether there were reasonable grounds for believing that the accused was involved in a serious offence. The prayer in that case was for cancellation of bail. CHANDRASWAMI v. CENTRAL BUREAU OF INVESTIGATION [1997 Cri.L.J.3124] was relied upon to submit that, ordinarily, a person suspected of having committed an offence under Section 120-B read with Section 420 of the I.P.C. would be entitled to bail. However, in the same breath Their Lordships have observed that the paramount consideration in such matter would always be to ensure that the enlargement of such persons on bail would not jeopardize the prosecution case. In the facts of that case, the main witness was the complainant himself who had been jealously pursuing the case since 1987 and the Court was not satisfied that the appellants would be in a position to influence the witnesses if they were released on bail. KISHAN SINGH v. PUNJAB STATE [AIR 1960 Punjab 307] was relied upon to submit that the general policy of the law is to allow bail rather than refuse it and bail should not be withheld as a measure of punishment or for the purpose of putting obstacles in the way of defence. It is also held in the same judgment that the character, behaviour, means and the status of the accused have to be taken into account and the Court is also entitled to take into consideration the possibility of the accused intimidating or otherwise winning over or influencing the witnesses for prosecution.

9. The learned Senior Counsel for the applicants also relied upon GURCHARAN SINGH v. STATE (DELHI ADMINISTRATION) [AIR 1978 SC 179] and submitted that the two paramount considerations in the matter of bail were the likelihood of the accused fleeing from justice and his tampering with prosecution evidence; that even in cases of non-bailable offences, a person need not be detained in custody for any period longer than it was absolutely necessary and unless exceptional circumstances are brought to the notice of the court which may defeat proper investigation and a fair trial, the Court would not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. The judgment of the Apex Court in STATE OF RAJASTHAN v. BALCHAND [AIR 1977 SC 2447] was relied upon to propound the rule of "bail and not jail", except where there are circumstances suggestive of the accused fleeing from justice or thwarting the course of justice or creating other troubles. BHAGIRATHSINH JUDEJA v. STATE OF GUJARAT [AIR 1984 SC 372] was relied upon to submit that even where a prima facie case was established, the

approach of the Court in the matter of bail would not be that of detaining the accused by way of punishment. A note of caution, however, is sounded in the observations that likelihood of abuse of the discretion by tampering with evidence by the accused is a material consideration. MISS HARSH SAWHNEY v. UNION TERRITORY [AIR 1978 SC 1016] was cited to submit that the accused need not be taken into custody for making a search of premises in her presence. The judgment of this Court in RAJNIKANT N. DESAI v. DY. SUPDT. OF POLICE [1986 G.L.T. 161] was relied upon to submit that merely because large amount was alleged to have been misappropriated, it cannot be regarded as a good ground for rejecting the application for anticipatory bail on the premise that it would be contrary to the interest of public or the State. Another judgment of this Court in SOLANKI RAVIBHAI DIPUBHAI v. STATE OF GUJARAT [1992 (1) G.L,R. 631] was relied upon to submit that even a man accused of an offence of murder can be released on bail having regard to the facts of the case. In the facts of that case, there was neither any allegation nor any whisper nor any circumstance suggestive of likelihood of the investigation suffering or being prejudiced or crippled if the accused remained at large. The judgment in DAYA v. STATE OF MADHYA PRADESH [1993 (2) Crimes 201] was relied upon to submit that mere apprehension of creation of terror or tampering of evidence was not sufficient to refuse bail. In RAMESH SEHGAL v. STATE OF HARYANA [1997 (2) Crimes 566], where no further investigation was envisaged, the apprehension that the accused was likely to overawe witnesses on account of his high status was found to be without substance. In SUKH RAM v. STATE THROUGH C.B.I. [1996 (4) Crimes 222], the question was whether bail could be refused to a person merely on the ground that some of the pages of the diaries were yet to be decoded when no grievance was made about the petitioner fleeing from justice or tampering with evidence. In the particular facts of that case, the Court felt that the petitioner could not tamper with the evidence. The learned counsel also relied upon a judgment of this Court in KOTTAM RAJU VIKRAM RAO v. STATE OF GUJARAT [1997 (18) G.L.R. 107) to submit that the material collected during the investigation on which the investigating agency relied to oppose the bail application should be disclosed in some form or the other to the accused. It is held in that case that when bail application under Section 437 or 439 is being heard and the question pertains to liberty of the subject, the subject approaching the court with the prayer for bail should have an opportunity to meet the material collected during the course of investigation on the basis of which it is urged by the other side that the

subject should not be released on bail because there are reasonable grounds for believing that he is guilty of an offence punishable with death or imprisonment for life. It is further held that such material should be disclosed by the investigating agency preferably in the form of an affidavit to be filed by the investigating officer stating therein the bare facts which were disclosed during investigation on which reliance is placed. It may be pertinent to note here that the petition in that case was filed against the order by which the claim of the petitioner to copies of documents and statements recorded by the investigating agency during the course of investigation was negatived. With due respect to the authoritative enunciation of law on various legal aspects of the matter, it can be seen that none of the judgments discussed hereinabove provide a principle or precedent perfectly applicable in the facts of this case, following which the applicants have to be enlarged on bail.

10. The learned counsel for the respondents, Mr.M.R.Shah and learned A.P.P., in reply, relied upon the judgments of this Court in SATISH JAGDISHCHANDRA MISTRY v. STATE OF GUJARAT [1992 (1) G.L.R. 3] and STATE OF GUJARAT v. ASHISH B. GANDHI [1993 (1) G.L.H. 268] to submit that the Court should not exercise its discretion in favour of the accused persons who are charged with serious offences against the society. Relying upon STATE OF GUJARAT v. SAIRABANU [197 (3) G.L.R. 2474], it is submitted that at pre-trial stage the Court should not enter into technical questions, analyse the case and appreciate the evidence. What is required to be seen is only prima facie case and whether the prima facie case is corroborated by the material placed on record. The judgment of this Court in STATE OF GUJARAT v. LALJI POPAT [1988 (2) G.L.R. 1073] is relied upon to submit that, in each case, the Court is required to consider the reasonable apprehension of the prosecuting agency depending upon the facts of each case. It is held in that case that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice to the individual involved and society affected. Merely because liberty of the accused is involved in case of detention of the accused during trial, it would not be a ground for releasing the accused on bail. Taking into consideration the observations of the Supreme Court in a number of decisions, Justice M.B.Shah (as His Lordship then was) elucidated the following factors as the relevant factors which are required to be taken into consideration for deciding bail applications:

"19. ....
....

(1) The nature of the charge is the vital factor and the nature of evidence is also pertinent.

(2) The punishment to which the accused may be liable, if convicted.

(3) While considering the question of granting bail under Sec.439 (1) of the Criminal Procedure Code, the Court should take into consideration the provisions of Sec.437 (1) in spite of the fact that under Sec.439 (1) the High Court and Sessions Court have wide jurisdiction to grant bail.

(4) The nature and gravity of the circumstances in which the offence is committed - say highway robbery or dacoity, gang rape, murder or murders because of group rivalry, attack by one community on other community or such other cases.

(5) The position and the status of the accused with reference to the victim and the witnesses say in case of burning of house-wife, witnesses may be neighbours, their evidence might be tampered with by any means.

(6) The reasonable possibility of the presence of the accused not being secured at the trial.

Merely because the accused is the owner of large property, movable, or immovable, would be no ground to presume that the presence of the accused would be secured at the trial by granting him bail. For this purpose the charge, the nature of evidence by which it is supported and the punishment to which the party would be liable, if convicted, are to be taken into consideration. In cases of highest magnitude of punishment assigned under the law, the Court can reasonably presume that no amount of bail

was sufficient to secure the presence of convict at the stage of judgment. In some cases accused may leave the country or go underground in such a manner that it becomes difficult to trace him out.

(7) Any likelihood of tampering with the witnesses.

This also depends on the seriousness of the offence and the nature of evidence. In serious offences if the accused are released on bail, they would be tempted to tamper with the evidence by hook or crook. Therefore, the position and the status of the accused with reference to the victim and the witnesses and the events leading to the incident and the history of the accused are required to be taken into consideration. As observed by the Supreme Court, in regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society.

(8) Jeopardising his own life being faced with the grim prospect of possible conviction in the case.

(9) The prospect of victim or his relatives indulging in private retribution who feel helpless and may believe that law may not protect them.

(10) The larger interests of public, society or the State.

(11) Similar other circumstances depending on facts and peculiarity of each case.

It should be noted that law regarding bail cannot be static and in each case the Court has to decide it on facts of each case and in the interest of justice and fair trial."

10.1 Referring to the judgment of this Court in KOTTAM RAJU VIKRAM RAO (supra), the learned counsel submitted

that in view of the fact that chage-sheet was yet to be filed against the applicants and the investigation was continuing, the full facts, details and documents discovered during the inchoate investigation could not be disclosed. The judgment of a Division Bench of this Court in NARSINH RAVAJI (1981 G.L.R. 231] was relied upon in this context to submit that the Court may peruse the entire record in order to satisfy itself that there is prima facie case against the accused, but the accused cannot be ordered to be given, before the investigation is over, copies of police statements.

11. In a recent judgment of the Apex Court in STATE OF MAHARASHTRA v. RAMESH TAURANI [1998 Cri.L.J. 855] it is observed that:

> "5. The other ground that was canvassed by the High Court was that the only evidence collected against the respondent was that he handed over an amount of Rs.25 lacs to the contract killers (who according to the prosecution committed the murder of Gulshan Kumar). Apart from the fact that in the context of the prosecution case, the above circumstance incriminates the respondent in a large way, we find that the Investigating Agency has collected other incriminating materials also against the respondent, to make out a strong prima facie case against him. It is trite that among other considerations which the Court has to take into account in deciding whether bail should be granted in a non-bailable offence is the nature and gravity of the offence. We are therefore of the opinion that the High Court should not have granted bail to the respondent considering the seriousness of the allegations levelled against him, particularly at a stage when investigation is continuing." (emphasis supplied).

12. Considering the facts and submissions as above, there being reasonable grounds for believing that the applicants are involved in serious offences punishable with sentences upto imprisonment for life, the investigation being at a crucial stage of unearthing the details of a large-scale scam and there being reasonable apprehension of the investigation being hampered if the accused were released on bail, the applications cannot be allowed at this stage.

13. In the result, respectfully following and applying the ratio of the judgments in STATE OF GUJARAT

v. LALJI POPAT, (supra) and STATE ADMINISTRATION v. RAMESH TAURANI (supra) and upon the prima facie findings as above, the applications are rejected without prejudice to the right of the applicants to pray for bail before the appropriate forum at the appropriate stage. If and when such a prayer is made, the Court will consider the same without in any way being influenced by the observations made in this order. Rule in each application is discharged.

Sd/-

13.12.2000 (D.H.Waghela, J.)

(KMG Thilake)